

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christopher John Gilmore,

Case No. 19-cv-0141 (WMW/ECW)

Plaintiff,

ORDER

v.

Martin County Sherriff Dept., et al.

Defendants.

This matter is before the Court on Plaintiff Christopher John Gilmore's motion to appoint a guardian ad litem, (Dkt. 49), and his motion to dismiss this lawsuit without prejudice, (Dkt. 51). For the reasons addressed below, the Court construes Gilmore's motion to dismiss as a notice of voluntary dismissal, Fed. R. Civ. P. 41(a)(1)(A), and accordingly denies as moot his motion to appoint a guardian ad litem.

ANALYSIS

On January 18, 2019, Gilmore, who is proceeding pro se, initiated the instant civil rights action against Defendants. To date, the Defendants have neither served an answer nor filed a motion for summary judgment. On October 28, 2019, Gilmore filed two motions. First, he moved for the Court to appoint a guardian ad litem on his behalf. Gilmore's second motion is titled "Motion to Withdraw/Dismiss Without Prejudice."

Rule 41 of the Federal Rules of Civil Procedure provides that the plaintiff in a case "may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ.

P. 41(a)(1)(A)(i). The Court liberally construes Gilmore’s “Motion to Withdraw/Dismiss Without Prejudice” as a notice of voluntary dismissal. *See Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984) (“[P]ro se pleadings are to be construed liberally.”). Because Defendants have filed neither an answer nor a motion for summary judgment, Gilmore may voluntarily dismiss this action without the Court’s involvement. As such, the Court directs the Clerk of Court to terminate this action.

In light of Gilmore’s voluntary dismissal, the Court no longer has jurisdiction over this action. Accordingly, Gilmore’s motion to appoint a guardian ad litem is denied as moot.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein,
IT IS HEREBY ORDERED:

1. The Clerk of Court shall terminate this action.
2. Plaintiff Christopher John Gilmore’s motion to appoint a guardian ad litem, (Dkt. 49), is **DENIED** as moot.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 14, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge